IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 186 of 2004

BHIMA RAM
V/S
UNION OF INDIA & ORS

Mr. RS SALUJA, for the appellant / petitioner

Mr. ARUN BHANSALI, for the respondent

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

By this appeal, the plaintiff appellant seeks to challenge the judgments and decrees of the two learned courts below, who have dismissed the plaintiff's suit as originally filed, and as amended, whereby in substance the appellant sought to challenge the order of penalty of removal from service, imposed upon him, consequent upon the departmental enquiry. The precise charge leveled against the appellant, interalia was, that he physically manhandled and misbehaved with a 14 years daughter of a neighbour co-employee. The defence of the appellant in substance was, that two persons Lok Chand and Ramavtar were nursing grudge against him, because he had lodged a complaint against them under Protection of Civil Rights Act, and therefore, a false case has been cooked up, wherein the date of the incident had also been changed, and the appellant is sought

to be proceeded against illegally. Various other objections were also raised in the reply to the charge-sheet. However, after completing the enquiry, the Enquiry Officer submitted the report, finding the appellant guilty. Thereafter a show cause notice was served with the proposed penalty of removal from service, enclosing there with necessary documents. To that no reply was filed, rather the present suit was filed, and along with the suit, application for temporary injunction was filed, which was dismissed by the learned trial court, and the learned Appellate Court as well. Thereafter again the appellant was given opportunity to submit representation against the enquiry report, but none was submitted, and the punishment was imposed. Against that, an appeal was filed which too had been dismissed.

Much latter thereafter, the present suit was amended, and the enquiry proceedings and the order was sought to be challenged on various grounds as detailed in paras 4 to 9 of the plaint, which interalia included the contention, that the enquiry was proceeded exparte, the record and evidence collected in interim enquiry was considered, that the proceedings were malafide, and irregular, the charge against him is false, and in departmental enquiry various witnesses named in para-6 of the plaint did not support incident. Then, malafide against Lok Chand and Ramavtar Singh were alleged, and it was contended that they colluded and cooked up false story.

Learned trial court recorded the evidence, and found the enquiry to be valid, and proper. It was also found, that the appellant has failed to prove malafide, and in any case the Enquiry Officer was O.P. Pipal, against whom there is no malafide, and all said and done, it cannot be believed that for whatever malice there may have been, any person would project a 14 years girl (Daughter), to cook up a false story against the plaintiff. Then, the other procedural aspects as contested were also considered. Various judgments were also considered, and the precise issues no. 1 and 2, being as to whether, the order of dismissal is wrong, illegal, and void, and requiring to be quashed on the grounds given in para 4 to 9 of the plaint, and the issue no. 2 being, as to whether the enquiry conducted against the appellant is contrary to law or illegal, and is required to be set aside, were decided against the plaintiff. It was also considered, that the plaintiff has not produced any document regarding the alleged Protection of Civil Rights complaint, said to have been lodged against Lok Chand and Ramavtar. The learned trial court also found, that the appellant was given sufficient opportunity to defend. He was provided defence nominee, and the defence nominee had also cross-examined the witnesses, and thus the enquiry was found to be proper, and the suit was dismissed.

In appeal, the learned lower Appellate Court also

affirmed the findings of the learned trial court, and dismissed the appeal.

In this appeal, the main ground given by the appellant is; firstly that the statements of the witnesses were not recorded during the course of regular enquiry, rather the statements recorded during the preliminary enquiry have been taken as such, during the course of final enquiry, and thereafter witnesses have been subjected to cross-examination, which is contrary to Regulation 44(6) of the Railway Protection Force Regulations, 1959. The other ground given is, that the appellant was not given reasonable opportunity to defend, as the defence assistant provided was not a match of skills of enquiry officer, and he was also not being given complete opportunity to prepare the case, and thus there has been a violation of principles of natural justice. Then the next ground given is, that the appellant was not paid full subsistence, and thus the appellant was denied reasonable opportunity to defend himself. Then, the other ground given is, that the order of the Enquiry Officer is not a speaking order as required by Rule 44(9). Then, the finding about failure to prove malafide has also been assailed.

In my view, leaving apart the aspect, that the appellant had got hearing before various forums, after the Enquiry Officer, being the Disciplinary Authority, the

Appellate Authority, the learned trial court, the regular First Appellate Court, and is now before this Court, as if, any number of forums, Courts, or authorities were to hear the matter would not be enough, until and unless, some Court or authority accepts the contention of the appellant. The present is a case, which can be said to be a glaring example of that attitude. Be that as it may. I may make myself clear, that I am narrating it only as a fact, and have in no manner kept in mind this aspect, while considering the case on merits.

It would suffice to say, that a collective reading of the grounds raised by the appellant makes it clear, that they may be bifurcated into two main grounds; one being about malafides entertained against the appellant by Lok Chand and Ramavtar, and the other being the broad head of violation of principles of natural justice.

So far the first aspect of malafide is concerned, I am at one with the findings of the learned courts below, that the plaintiff has failed to prove the malafide, inasmuch as, though in the reply to the charge-sheet the date of lodging of the complaint under Protection of Civil Rights Act was given, but then while in the witness box he has not proved it, nor any document has been filed, and the learned courts below have rightly inferred, that had the document been filed, it would have been clear, that report

was lodged after the present incident in question. Neither P.W.1 nor P.W.2 have dared to depose any date, even of happening of the incident, which is said to have given rise to the complaint by the appellant under Protection of Civil Rights Act. It is again a different aspect of the matter, that no malafide or bias is alleged against the Enquiry Officer, and it would be too much to accept the bald allegation, that these persons in collusion could manage all these things, even to the extent, that Amar Singh would go to the extent of putting at a stake the life and reputation of his growing young daughter aged 14 years, by alleging her to have been molested, and misbehaved, by the appellant who happens to be a person of scheduled caste. Thus, this contention cannot be accepted.

Then, I take up the contention about the violation of principles of natural justice, including all its aspects.

The law in regard to requirement of compliance of principles of natural justice, can no more be said to be a subject, which is not adjudicated upon by Hon'ble the Supreme Court, practically on all its facets. It is also true, that principles of natural justice are required to be complied with, even in absence of any provision in that regard. However, they are not like "a pound of flesh" to be insisted upon, in each and every case.

Hon'ble the Supreme court in K.L. Tripathi Vs. State Bank of India, reported in AIR 1984 SC-273, has held, that theory of particular principle natural justice has been violated or not, is to be judged in the background of nature of charges, nature of investigation conducted, in the background of any statutory rules governing such enquiry. Expounding the doctrine, it was held, that principles of natural justice will, therefore, depend upon facts and circumstances of each particular case. In that case it was held, that it cannot be said that in conducting enquiry, or framing charges, or in arriving at the decision, the authorities concerned have committed any violation of principles of natural justice, merely because the evidence was not recorded in the presence of the delinquent, or that the material gathered, the gist of which was communicated to him, was not in his presence, as the delinquent had accepted the factual basis of the allegation. It was also found, that the delinquent had not participated, and question was about credibility of the witness, or credibility of the evidence on record, rather he had given explanation about having over worked, having consulted superiors, and sought guidance, and that his conduct has not actually caused any financial risk or damage to the Bank concerned. Considering these things, it was found, that there was no violation of principles of natural justice. Propounding the principles, it was held in

para-32 and 33 as under”-

> “32 The basic concept is fair play in action administrative judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis if there be any between the parties. If the credibility of a person who has testified or given some information is in doubt or if the version or the statement of the person who has testified is in dispute right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute no real prejudice has been caused to a party aggrieved by an order by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.
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> 33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts or the weight to be attached on disputed facts but only an explanation of the acts absence of opportunity to cross-examination does not create any prejudice in such cases.”

Thus, the sufferance of prejudice, by the person, complaining of violation of principles of natural justice, was also held to be one of the necessary allegation, required to be made. Then in para-41 it was again held as under:-

> “41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice

but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle has to be judged in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa (1969) 3 SCC 392. Hidayatullah C.J. observed there at page 394 of the report "there is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right." Judged by this principle in the background of the facts and circumstances mentioned before we are of the opinion that there has been no real prejudice caused by infraction of any particular rule of natural justice of which appellant before us complained in this case. See in this connection observations of this Court in the case of Union of India & Anr. v. P.K. Roy (1968) 2 SCR 186 (AIR 1968 SC 850) where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority upon the character of the rights of the persons affected the scheme and policy of the statute and other relevant circumstances disclosed in a particular case". See also in this connection the observations of Hidayatullah C.J. in the case of Channabasappa Basappa Happali v. State of Mysore (1971) 2 SCR 645 (AIR 1972 SC 32). In our opinion in the background of facts and circumstances of this case the nature of investigation conducted in which the appellant was associated there has been no infraction of that principle. In the premises for the reasons aforesaid there has been in the facts and circumstances of the case no infraction of any principle of natural justice by the absence of a formal opportunity of cross-examination. Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi judicial

adjudications."

Then, Hon'ble the Supreme Court, in Karnataka Public Service Commission Vs. B.M. Vijaya Shankar, reported in JT 1992(4) S.C. 348, wherein speaking about concept of natural justice held in para 4 as under:-

> "…….Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits, yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules……."
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> (emphasis supplied)

Then in Union of India Vs. Anand Kumar Pandey, reported in JT 1994(4) SC-419, again dealing with the question of requirement of principles of natural justice, in para 9 it was held as under:-

> "This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation…."

This was a case where in a competitive written test for appointment, at Center 115 only 35 candidates qualified, and the railway authorities directed only these 35 candidates to appear in a fresh written examination, which action virtually amounted to canceling the examination of said Center. Hon'ble the Supreme Court also found, that it would have been fair to call upon all the candidates who appeared in Center 115 to take the written examination again, but in the facts and circumstances of the case, no fault was found with the action of the railway authorities in calling upon only 35 candidates to take the fresh examination.

State of M.P. Vs. Shyama Pardhi, reported in AIR 1996 S.C.-2219, was a case where recruitments were made, wherein the persons not possessing the requisite qualification came to be wrongly selected, and sent for training, after their successful completion of training, appointments were made. However thereafter by notice dt. 31.1.1994 they were intimated, that their selection for training was illegal, and their services would be terminated w.e.f. 23.2.1994, Tribunal in that case held, that cancellation of appointment, without opportunity of hearing, was violative of principles of natural justice, and therefore, reinstatement with consequential benefits was directed. Hon'ble the Supreme Court allowed appeal against that order, and held, that since the prescribed

qualification has not been satisfied, the initial selection to undergo training, was per se illegal, and later appointments, are in violation of statutory rules. It was, therefore held, that "the Tribunal, therefore, was not right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise".

Hari Pada Khan Vs. Union of India, reported in AIR 1996 S.C.-1065, again was a case, where a permanent staff member of India Oil Corporation was said to have been involved in theft of oil from Haldia Dock Complex, for which the F.I.R. was lodged, the person concerned was arrested, and subsequently released. However, relying upon Station Order No. 20-IV of the Corporation, he was dismissed from service. The order comprehended a situation, where the General Manager is satisfied for reasons to be recorded in writing, that there is neither expedient, nor in the interest of security, to continue the workman, the workman may be removed or dismissed from service, without following the procedure laid down under III of the clause. Validity of this rule was challenged, which was upheld by the High Court. Dealing with the aspect of principles of natural justice, in para 5, Hon'ble the Supreme Court held that "the doctrine of principle of natural justice has no application when the authority concerned is of the opinion that it would be inexpedient to hold an enquiry and that it

would be against the interest of security of the Corporation to continue in employment the officer-workman when serious acts are likely to affect the foundation of the institution…"

Thus, in this case, the validity of the rule, excluding the requirements of principles of natural justice, was upheld, which rule was challenged being ultravires Article 14 and 21.

In para 6 it was further observed in very strong words as under:-

> "…..It is settled law that the principles of natural justice cannot supplant but can supplement the law".

Biswa Ranjan Sahoo Vs. Sushanta Kumar Dinda, reported in JT 1996(6) S.C.-515, is again a case, where, pursuant to the advertisement no. 6 of 92, for filling up of six posts of charge men 'B' Grade in Mechanical & Electrical Division, selection process was undertaken, and some persons, including the petitioner, were appointed. That selection was questioned, and the Tribunal quashed the entire selection process without giving notice to the persons affected. Considering the challenge to order of Central Administrative Tribunal, on the anvil of violation of principles of natural justice, it was held by Hon'ble the Supreme Court in para 3 as under:-

> "A perusal thereof would indicate the enormity of mal-practices in the selection process. The question, therefore, is: whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass mal-practice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to having been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution."

Avinash Nagra Vs. Navodaya Vidyalaya Samiti, reported in JT 1996(10) S.C. 461, was a case where services of a teacher in a co-educational school was terminated for misconduct towards a girl student. In that case, according to the relevant rules, read with the notification dt. 23.12.93, a summary procedure could be resorted, and the Director was only required to record reasons, and inform the Minister for not holding enquiry. Validity of the action of the Director in dispensing with the enquiry was upheld, and the contention about violation of principles of natural justice was negatived. In that case the allegations against the teacher were, that he was guilty of moral turpitude, involving exhibition of immoral sexual behavior towards a girl student in Jawahar Navodaya Vidyalaya, Kinnaur. The contention raised was, that since the charges

leveled against him, impinge upon his character, conduct and career, he should have been given opportunity to cross examine the victim, and her colleague, who have given their statements, and to had himself examined. The procedure adopted was contended to be violative of settled legal principles and principle of Audi Alterem Partem, and thus the action was claimed to be vitiated by manifest error of law warranting interference. The termination was challenged by the employee in the High Court by filing a writ petition, which was dismissed as withdrawn, and second writ petition was dismissed on the principles of constructive res judicata.

In the circumstances of that case, Hon'ble the Supreme Court directed the management to conduct an enquiry, and submit report in a specified time, in pursuance whereof notice was given to the employee, together with the statement of the girl, her room-mates, and the attender, and after receiving the explanation submitted by the employee, a report was drawn up, and submitted to the Supreme Court, finding the appellant guilty. It is after that report, that the action was assailed on the above mentioned contention. In those circumstances Hon'ble the Supreme Court dismissed the appeal, however it did consider the question of requirement of principles of natural justice and in para 12 it was held as under:-

> "…..The question arises; whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is an ice berg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail on the coffin. It is self-inspection and correction that is supreme. .. .. dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."
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> (Emphasis supplied)

Then in the case of Canara Bank Vs. V.K .Awasthy reported in (2005)6 SCC-321 again, Hon'ble the Supreme Court did consider its previous judgments, and interfering with the judgment of High Court, which had set aside the punishment of dismissal, Hon'ble the Supreme Court restored the order of punishment, holding, that the decision of the learned Single Judge, on the question of quantum of punishment, and the Division Bench, regarding alleged violation of principles of natural justice, cannot be maintained. In this case various aspects of the compliance of natural justice have been considered. In para 5 and 6 it has been noticed, that in that case, undisputedly, the employee did not raise any ground, regarding violation of principles of natural justice, either in the memorandum of appeal, or at the time of personal hearing of the employee before the appellate authority, and admittedly, there was

no material placed by the employee, to show, as to how he has been prejudiced. Then, the observations of Hon'ble the Supreme Court in Managing Director, ECIL Vs. B. Karunakar, reported in (1993) 4 SCC-727 were reproduced, and it was held, that in the appeal before the Appellate Authority, findings of the enquiry officer, and disciplinary authority, were challenged and, therefore, the question of any prejudice does not arise, and since the employee had the opportunity to meet the stand of the employer, it was to his advantage, and opportunity for personal hearing was also granted, and thus there was no question of violation of principles of natural justice. Then a question was posed, to be adjudicated, as to whether principles of natural justice have been violated, and if so, to what extent any prejudice has been caused. Then, in para-8 to 13, the concept of principles of natural justice has been recapitulated. Then, in para-14, it has been noticed, that the concept of natural justice has undergone a great deal of change in the recent years, viz. what particular rule of natural justice should be implied, and what its context should be, in a given case, must depend, to a great extent, on the fact and circumstances of that case, the framework of the statute, under which the enquiry is held, and that the old distinction, between a judicial act, and an administrative act, has withered away. Then, in para-15 the few instances from various judgments, where the principles of natural justice have been defined, as "universal

justice", "the requirements of substantial justice", "the natural sense of what is right and wrong", "fundamental justice", "fair play in action", "a duty to act fairly", "a fair crack of the whip" etc. have been recapitulated. Then, in para-16 to 20 it has been held as under:-

> "16. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in cause sua" or "nemo debet esse judex in propria causa sua" as stated in (1605) 12 Co. Rep. 114 that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram Partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur at altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram Partem rule, namely "qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" (see Bosewell case) or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

17. What is known as "useless formality theory" has received consideration of this Court in M.C. Mehta v. Union of India, (1999) 6 SCC-237. It was observed as under: (SCC pp.245-47, paras 22-23)

> "22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corporation 1971(1) WLR 1578, (per Lord Reid and Lord Wilberforce), Glynn v. Keele University 1971 (1) WLR 87, Cinnamond v. British Airport Authority 1980(1) WLR 582 and other cases where such a view has been held. The latest addition to this view is R v. Ealing Magistrates' court exp. Fannaran (1996) 8 Admn. L.R. 351(358) (See DeSmith Suppl.p.89)(1998) where Straughton L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMohan 1987(2) WLR 821(862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood- not certainty – of prejudice'. On the other hand, Garner Administrative Law (8th Edition 1996, PP 271-272) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin Megarry J. in John. V. Rees 1969 (2) WLR 1294 stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the Court but for the authority to consider. Ackner, J. has said that the "useless formality theory" is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that "convenience and justice are often not on speaking terms". More recently Lord Bingham has deprecated the 'useless formality' theory in R v. Chief Constable of the Thames Valley Police Forces exp. Cotton 1990 IRLR 344 by giving six

reasons. (see also his article 'Should Public Law Remedies be Discretionary? 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in "Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL pp.27-63) contending that Malloch and Glynn were wrongly decided. Foulkes (Administrative Law, 8th Ed. 1996, P.323), Craig (Administrative Law 3rd Ed.P.596) and others say that the Court cannot prejudge what is to be decided by the decision making authority. DeSmith (5th Ed. 1994 paras 10.031 to 10.036) says Courts have not yet committed themselves to any one view though discretion is always with the Court. Wade (Administrative Law 5th Ed. 1994, PP. 526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma (JT 1996(3) S.C. 772), Rajendra Singh v. State of M.P.(JT 1996(7) S.C. 216) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it can not be waived."

23. We do not propose to express any opinion on the correctness, or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."

(emphasis in original)

> 18. As was observed by this Court we need not to go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. *As is rightly pointed out by learned counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned.* (See godde Venkateswara Rao vs. Govt. of A.P. AIR 1966 SC-828) *It is to be noted that legal formulations cannot be divorced from the fact situation of the case.* Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu Vs. Union of India AIR 1990 SC-1489).
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> (*Emphasis Supplied*)
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> 19. The aforesaid position in law was again reiterated in Canara Bank Vs. Debasis Das (2003 SCC(L&S)-507).
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> 20. Inevitably, the conclusion arrived at by the Division Bench that there was violation of principles of natural justice cannot be maintained."

M.C. Mehta Vs. Union of India, reported in JT 1999(5) SC-114, was a case dealing with a case where the allotment of plot was cancelled without notice to the allottee, which action was challenged on the grounds of violation of principles of natural justice, Hon'ble the Supreme Court in para 17 referred to the earlier judgments of Hon'ble the Supreme Court, in Gadde Venkateswara Rao Vs. Government of Andhra Pradesh, reported in 1966(2) SCR-172, and that of Mohammad Swalleh Vs. Third Addl. District Judge, Meerut, reported in JT 1987(4) SC-291, where despite violation of principles of natural justice the writ petition was declined, it was also held in para 21 thereof

as under:-

> "It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice."

If the contention of the learned counsel for the appellant, on all aspects of principles of natural justice is considered, in the light of aforesaid decisions of Hon'ble the Supreme Court, to say the least, and with utmost brevity, the contention has no substance, and is required to be rejected.

In the present case what is significant to note is that much was attempted to be alleged in the plaint, but in view of the above judgments of Hon'ble the Supreme Court, the most significant aspect which has been noticed above, viz. that on the first possible and available opportunity, being when the appellant being served with a show cause notice along with the relevant papers of enquiry, and the proposed punishment, and thereby he was called upon to submit his representation, but he submitted none, rather filed the present suit, and therein filed application for temporary injunction which was also dismissed right upto to the Appellate court, and even after that final dismissal, the Disciplinary Authority again called upon the appellant even then to submit the representation, but for reasons

best known to the appellant, he did not chose to submit any representation. In my view this completely disentitles the appellant, in view of the above judgments of Hon'ble the Supreme Court, to now contend that there has been any violation of any principles of natural justice.

That apart even otherwise having gone through the entire record of the learned trial court, in my view, the plaintiff has not been able to make out any case of violation of principles of natural justice.

Still more significant aspect of the matter is, that at no stage the appellant has alleged and proved, as to what prejudice were suffered by him on account of the alleged violation of principles of natural justice. Even at the cost of repetition, taking an over all view of the matter, in my view, it cannot be said, that for the reasons given by the appellant, such a false report would be cooked up against the appellant. It is again no less significant to note that the minor girl, who is alleged to have been misbehaved as per the charge is not the daughter of the two persons against bias and malafide is alleged, and no bias or malafide has been substantiated against the father of the girl, except the bald allegation of his having fallen in collusion with the above two persons, which apart from being much too farfetched cannot be said to be fact on account of which he would put the very life and reputation

of her young daughter to such a stake.

Thus, I do not find any sufficient ground to interfere with the impugned judgments and decrees. The appeal thus has no force and is, therefore, dismissed summarily.

(N P GUPTA),J.